

# Santa Ynez Valley Concerned Citizens

Board of Directors

December 18, 2013

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**RE: RE-SUBMISSION OF THE Santa Ynez Band of Mission Indians of the Santa Ynez Reservation Fee to Trust Land Acquisition Application for 1,427.781 Acres**

Dear Regional Director Dutschke,

*The Santa Ynez Valley Concerned Citizens (SYVCC)* submits this letter of comment to be included in the administrative record for the proposed Fee-to-Trust Application of the Santa Ynez Band of Mission Indians (SYBMI) for 1,427.78 acres in Santa Ynez, California. We include these comments to be taken together with our previous comments in our letter to you dated October 17, 2013 and our comments on The Chumash Environmental assessment for the Camp 4 property dated October 4, 2013 included as exhibits herein. In addition, we wish to adopt and incorporate, by this reference, the comments submitted by the County of Santa Barbara on October 7, 2013, with respect to the Environmental Assessment (EA) and the County of Santa Barbara October 31, 2013 comments on the Fee to Trust Application for the proposed acquisition.

We reiterate that the residents of the Santa Ynez Valley and indeed of Santa Barbara County as a whole expect and demand rigorous, objective, unbiased, transparent and above all else thorough analysis and evaluation of significant land use decisions irrespective of jurisdiction. SYVCC and indeed most of the residents of the Greater Santa Ynez Valley are well acquainted with the California Environmental Quality Act, (CEQA). CEQA demands a thorough examination of cumulative impacts of foreseeable projects. The sheer magnitude of the proposed trust acquisition alone and taken in concert with The Santa Ynez Band's nearly 1,000,000 square feet of intensive casino/resort development, numerous recent commercial property acquisitions, their two additional pending trust applications, their two (2) hotel acquisitions in Solvang and their recently completed gas station and Car Wash development necessitate a thorough evaluation of the environmental,

not subject to CEQA, the current Environmental Assessment is woefully inadequate and *we must demand that the more rigorous Environmental Impact Survey (EIS) be undertaken before consideration of this application proceeds any further.*

This Application has been amended due to the IBIA action to vacate the materially flawed Land Consolidation and Acquisition Plan ("Plan") previously approved by BIA staff on June 17, 2013. SYVCC asserts that until *and unless all references to it and reliance upon it* have been removed from the Application and the associated environmental documents, there should be no action taken on this fee-to-trust application. We must point out, that the current Re-Submitted Application is still relying on the EA that was issued for the prior application. This EA relies on the development of a Tribal Consolidation Area (TCA) which the Interior Board of Indian Affairs issued its Order to Vacate on October 24, 2013. Thus, The EA is inconsistent with the Re-Submitted application. To be consistent under 25 C.F.R. 151.11., the Environmental Survey (EIS) must review the proposed Trust Acquisition as an Off Reservation acquisition.

In addition, the stated purpose of the proposed fee to trust action is to provide housing for tribal members. Many of these tribal members currently reside on the existing reservation property. The Environmental Survey must evaluate and analyze the environmental impacts that will inevitably occur on the existing reservation once residences and the land upon which they sit is no longer needed for housing by tribal members. The proposed fee to trust action will free up large areas on the existing reservation eligible for gaming, commercial development, high density employee housing. This cumulative growth inducing consequence must be fully analyzed. The BIA will be clearly negligent if these issues are not considered and any action taken without this analysis would be arbitrary and capricious.

The following elements pertain to specific comments on the re-submitted Fee to Trust application of the Santa Ynez Band:

**The Chumash Fee-to-Trust Application does not fully address, or adhere to, all the factors in 25 C.F.R. Part 151 which are the regulations that govern fee to trust applications and specify the factors that must be considered by the Department of the Interior.**

SYVCC asserts that BIA has ignored the statutory limitations of 25 USC 465 and 25 CFR 151.11. The Chumash were not affected by the Dawes Act. The Chumash Reservation was not created until December of 1901 well after the impacts of the Dawes Act. Further, we believe the EA should be corrected, issued as a full EIS and re-circulated as remnants of the TCA remain in this document and will unfairly influence and affect the integrity of decision makers in this proposed acquisition. Development of the TCA while not fully stated in the Order to Vacate by the Interior Board of Indian Appeals was an abuse of the Regional Director's authority. Any decision influenced by perceptions created by the TCA as the Camp 4 property being "restored homelands" creates irreparable harm. We adopt and incorporate by

reference the letter of Comment submitted to the Regional Direct, BIA s presented December 9, 2013 by *Stand Up for California*. In addition, we adopt and incorporate by reference the legal arguments made in the letter from Governor Schwarzenegger's Legal Affairs Secretary Peter Siggins to Mr. James Fletcher of the BIA dated August 26, 2005.

**With the vacating of the Tribal Consolidation Area, the current application must now be treated as an "Off-Reservation Acquisition. The re-submitted application and the Environmental Assessment fail to comport with (a) 25 CFR 151.11(a) Off Reservation: (b) 151.11 (b) Off Reservation: and (c)151.11 (c) Off Reservation:**

SYVCC asserts that the current application for Trust acquisition fails to provide sufficient scrutiny as to the purposes and needs for the proposed acquisition demanded for an off-Reservation acquisition. Additionally *the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use*". Without this specificity, reasonable assessment of the potential burdens associated with the acquisition cannot be calculated to establish fair and adequate mitigation and reimbursement to the affected jurisdiction. SYVCC believes In addition, any contemplated Fee-to-Trust analysis must have a thorough evaluation of the cost shifting that occurs when fee land is taken into trust. The loss of property taxes can and does have a significant impact on the ability of local government to provide social and emergency services to the surrounding community. The loss of property tax affects local school district budgets further affecting the quality of education. The loss of jurisdictional authority affects a local government's ability to control the equitable sharing of the regions natural resources which include water, waste water disposal, traffic circulation, law enforcement and emergency services, management of urban sprawl, night sky conservation, pollution, mosquito abatement, conservation of agricultural resources as well as compatible land uses. *Where is their business plan?*

SYVCC is highly skeptical of the term *Land Banking* as it appears to understate the impact of potential intensive commercial development of the property as was proposed by the Tribe in 2003 in partnership with Fess Parker. At that time the Tribe proposed an intensive plan inclusive of 2 golf courses, a 300 unit resort hotel, equestrian center, and 250 market rate homes targeted for one half of the property currently under discussion. SYVCC is well aware of the fact that after Trust Acquisition, Tribal Governments can and do change their minds rendering the mitigation agreements arrived at with local jurisdictions meaningless. SYVCC believes that this curious feature incentivizes tribal governments to understate proposed developments when evaluating the cost of mitigation. The EA provided with this Application dramatically understates the burdens posed both by the indicated use but more dramatically by the intensified uses proposed by the Chumash in 2003.

From the Peter Siggins letter: *"Neither the term or the concept of 'land banking' for future generations or future speculative need appears anywhere in Section 465, the Department of the Interior's regulations or the legislative history of either."* Land banking is nothing

more than a desire of the tribe and for the BIA to honor it would be more than an abuse of discretion: the BIA has no lawful authority to create such a concept.

**The Santa Ynez Band has not made any compelling argument to justify the need for this trust acquisition.**

The Chumash exemplify the intended success of California's Proposition 1A passed in 2000 to provide a monopoly on casino style gaming that would generate revenue for tribal governments and raise the standard of living for all tribal members. The Tribe has purchased a number of other properties in the Santa Ynez Area and is a successful business model. The Chumash with its current land base and additional fee lands have achieved a diversified economic self-sufficiency!

There is a proud tradition and much precedent for the Act -- and other similar programs -- providing economic subsidies to the less privileged in society. However, approval of this Application removing local land use controls and waiving state and local taxes over this much land for a tribe of this much wealth would be unprecedented.

**SYVCC asserts herein that the Western Regional Office has demonstrated a pervasive and widespread incapacity to perform reasonable due diligence in the verification and evaluation of Fee-to-Trust applications resulting in an abdication of its oversight responsibilities.**

SYVCC wishes to adopt and incorporate, by this reference the Article from the Pepperdine Law Review Volume 40, Number 1 *Extreme Rubber-Stamping: The Fee-to-Trust Process of the Indian Reorganization Act of 1934* by Kelsey J. Waples. The article documents an approximate 100% approval rate of Fee-T-Trust applications through the Western Regional Office of the BIA. This performance is reflective of the undue influence of Tribal applicants who are members of the California Fee To Trust Consortium.

**We reiterate the following concerns from our previous comments with regard to the applicability of the EA relative to the Fee-to-Trust applications. The following shortcomings have not been remedied.**

- 1. The standard of review for this Trust Acquisition application is inconsistent with the BIA's notice..*
- 2. The existing application is for housing and economic development, yet applies the less rigorous standard of review for applications that are solely for housing.*
- 3. The Tribe's justification for the FIT based upon a need for tribal housing is unsubstantiated.*

**4. The EA does not include the more rigorous evaluation required for non-housing uses proposed by the Tribe.**

**5 The Tribe can meet its goals by seeking entitlements through the County of Santa Barbara and does not need to take the land Fee-to-Trust in order to meet the stated goals.**

**6. The EA conducts a very superficial analysis of Cultural Resources, one of the significant factors weighed in determining whether there is a historical connection to the property which is the subject of the Trust Acquisition.**

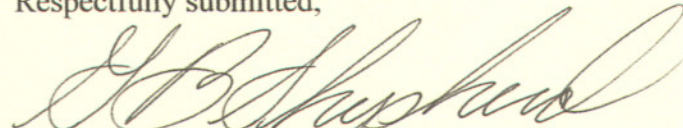
**7 We are concerned about the independence of the Environmental Consultant and the seeming abdication of critical oversight by the Lead Agency.**

SYVCC adopts and incorporates by this reference the *Comments of the Santa Ynez Valley Alliance, in The Santa Ynez Band of Chumash Indians Camp 4 Fee-to-Trust Draft Environmental Assessment dated October 4, 2013 and inclusive of the analysis of Lawrence E Hunt, Consulting Biologist.* We also acknowledge the failure of the Consultant AES to properly compile accurate tax reporting data reflective the SYBMI request to release the Camp 4 property from the Williamson Act provisions there by understating the lost revenue to the County of Santa Barbara.

**8. The proposed acquisition is incompatible with Santa Barbara County's General Plan, the Santa Ynez Valley Community Plan and Santa Barbara County Land Use Regulations.**

In conclusion, SYVCC requests that the Amended Fee to Trust Application be **denied** and that the Santa Ynez Band of Chumash Indians be directed to process any and all development proposals utilizing Santa Barbara County's land development process which is available to all property owners .

Respectfully submitted,



Gerry Shepherd, Board Member  
The Santa Ynez Valley Concerned Citizens

Enc:

EXHIBITS: Attached and made a part herein:

1. SYVCC Letter of Comment to Regional Director dated on Environmental Assessment of Camp 4 dated 10/4/2013

2. SYCVV letter of Comment on Chumash Fee-to-Trust Application dated 10/17/2013

3. Letter of Comment by *Stand Up for California* on the Re-submission of the Fee-to-Trust Application for Camp 4 dated 12/9/2013

4. Comments on Environmental Assessment, Santa Ynez Band of chumash Indians by Andiette Culbertson dated 9/27/2013

5. Comment Letter by **The County of Santa Barbara** on the Fee-To-Trust application of SYBMI dated 12/17/2013

6. Letter of Comment by **The County of Santa Barbara** on the SYBMI Fee-To-Trust Application dated 10/31/2013

# *Stand Up For California!*

## **“Citizens making a difference”**

[www.standupca.org](http://www.standupca.org)

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December 9, 2013

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**RE: RE-SUBMISSION OF THE Santa Ynez Band of Mission Indians of the  
Santa Ynez Reservation Fee to Trust Land Acquisition Application for 1,427.78<sup>1</sup> Acres**

Dear Regional Director Dutschke,

*Stand Up For California* submits this letter of comment to be included in the administrative record for the proposed Fee-to-Trust Application of the Santa Ynez Band of Mission Indians for 1,427.78 acres in Santa Ynez California.

The Santa Ynez Band of Mission Indians (Chumash/Tribe) has requested the Bureau of Indian Affairs (BIA) take approximately 1,427.78 acres into trust. In addition to the comments *Stand Up For California* has already submitted on October 17, 2013 regarding the Fee to Trust Application, we wish to adopt and incorporate, by this reference, the comments submitted by the County of Santa Barbara on October 7, 2013, with respect to the Environmental Assessment (EA) and the County of Santa Barbara October 31, 2013 comments on the Fee to Trust Application for the proposed acquisition. These comments are important and should be fully addressed when evaluating the EA and considering the Chumash Fee to Trust Application.

However, we must point out, that the current Re-Submitted Application is still relying on the EA that was issued for the prior application. An EA relying on the development of a Tribal Consolidation Area (TCA) which the Interior Board of Indian Affairs issued its Order to Vacate the Tribe's Land Consolidation and Acquisition Plan on October 24, 2013. The EA is inconsistent with the Re-Submitted application. The EA must be corrected and re-circulated preferably as a full Environmental Impact Statement (EIS) particularly now that this land acquisition is being properly reviewed as an Off Reservation acquisition under 25 C.F.R. 151.11.

*Stand Up For California* will address each of the criteria in 25 Code of Federal Regulations Part 151.10 and 151.11 as is required for Off Reservation Acquisitions.

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<sup>1</sup> The Chumash EA states 1,433 acres, and the Application recites 1,427.78 acres –this inconsistency must be rectified.

**I. The factors listed in 25 Code of Federal Regulations (C.F.R.) Part 151**

The Chumash Fee-to-Trust Application does not fully address, or adhere to, all the factors in 25 C.F.R. Part 151 which are the regulations that govern fee to trust applications and specify the factors that must be considered by the Department of the Interior. Further this application is inconsistent with the purposes of 25 U.S.C. 465. Section 465 was intended to restore tribal land lost through the federal allotment process and to allow for the acquisition of land in trust until such time as a tribe had sufficient land to be economically self-sufficient. In this case, the acquisition does not constitute land lost to the Chumash through the federal government's allotment process. (Dawes Act) *The BIA has ignored the statutory limitations of 25 USC 465 and 25 CFR 151.11. The Chumash were not affected by the Dawes Act. The Chumash Reservation was not created until December of 1901 well after the impacts of the Dawes Act.*

Further, the Chumash exemplify the intended success of California's Proposition 1A passed in 2000 to provide a monopoly on casino style gaming that would generate revenue for tribal governments and raise the standard of living for all tribal members. The Tribe has purchased a number of other properties in the Santa Ynez Area and is a successful business model. The Chumash with its current land base and additional fee lands have achieved a diversified economic self-sufficiency!

On June 17, 2013, the Pacific Regional Office of the Bureau of Indian Affairs approved without notice to affected private property owners or affected local governments a Tribal Consolidation Plan (TCA). The TCA administratively created what amounted to a claim of aboriginal lands or restored lands for the Chumash. The proposed trust acquisition encompasses 1,427.78 acres located east of Route 154 and north of Armour Ranch Road within the TCA. The TCA on October 24, 2013 by Order of the Interior Board of Indian Appeals was vacated. However, Section 2.1 of the EA specifically states that the fee to trust acquisition located within the TCA is to be considered an On Reservation acquisition and processed under 25 C.F.R. 151.10.

*We believe the EA should be corrected, issued as a full EIS and recirculated as remnants of the TCA remain in this document and will unfairly influence and affect the integrity of decision makers in this proposed acquisition. Development of the TCA while not fully stated in the Order to Vacate by the Interior Board of Indian Appeals was an abuse of the Regional Director's authority. Any decision influenced by perceptions created by the TCA as the Camp 4 property being "restored homelands" creates irreparable harm.*

The BIA and the Chumash have ignored the statutory limitations of the California Land Commissions Act of 1851. The 1851 Act created a Board of Commissioners to determine the validity of all land claims, and it required every person including Indians "claiming lands in California by virtue of any right to title derived from the Spanish or Mexican government" to present the claim within two years. Any land not claimed within two years, and any land for which a claim was finally rejected was to be deemed "part of the public domain of the United States". The Chumash and the BIA have missed the deadline for a land claim by 160 years.

**(a) 25 CFR 151.11(a) Off Reservation:** considers the factors for an On Reservation acquisition 25 C.F.R. 151.10 (a) – (c) and (e) – (h). An off-reservation acquisition requires the Secretary to evaluate additional criteria when the request for land is located outside of the reservation or is noncontiguous to the tribe's reservation and the acquisition is not mandated. (Comments to the 151.10 criteria are under section II of this letter.)

**(b) 151.11 (b) Off Reservation:** Requires the distance from the boundaries of the tribe's reservation shall be considered as follows, "*as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition.*" Further, that: "*The Secretary shall give greater weight to the concerns raised by local*



Fee to Trust Comments, for 1427.78 ac. for the Chumash Mission Indians of Santa Ynez, **government”.**

The proposed acquisition of Camp 4 parcels is 1.6+ miles from the reservation boundary. It is noncontiguous. The land is located beyond several private properties and across two intersecting state highways. This acquisition creates a checkerboard effect on the sovereign tribal land base and negatively affects the County and Community General Plans. The proposed development for the 1427.28 acres is jurisdictionally contradictory and inconsistent with both the County of Santa Barbara and Community General Plan. Taking the land into trust will have significant future taxation implications on the local government, the local school district and the State of California.

The Tribe in its Re-submitted narrative limits its description of tribal lands to only the developments that exist on trust lands along the Creek. This does not give a complete picture or analysis of the economic self-sufficiency of the Santa Ynez Band of Mission Indians. The Tribal lands owned in fee are extensive throughout the valley. The fee lands and commercial operations generate significant income and create jobs for non-tribal citizens in the area. The taxable revenues of these operations support local government and strengthen the surrounding community. The Chumash tribal land base held in fee and in trust is extensive.

Moreover, while the new rule in 25 C.F.R. 151.12 (The Patchak Patch) acknowledges stakeholders and places our names on the service list, there is still no indication from the BIA that our concerns will be taken seriously and given significant weight and consideration in the decision making process. *Stand Up For California* suggests it is reasonable to assert the concerns of the local affected private property owners in the area as well as the regional area, all stakeholders **must be considered equally** along with affected local government since the ruling by the U.S. Supreme Court in Patchak.

**(c)151.11 (c) Off Reservation:** “Where land is being acquired for business purposes, *the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use*”. The Chumash have not provided a detailed comprehensive economic business plan demonstrating the economic benefits associated with this proposed acquisition. Here again, and this further demonstrates the need for a new EIS, Chumash EA states at 1-7 of the Introduction; ***“Secondarily, the trust acquisition of the proposed trust land would also allow full tribal governance over its existing agricultural operations on the property; thereby allowing the Tribe to continue to build economic self-sufficiency through diversified tribally governed commercial enterprises”***. (Emphasis added) Clearly, the Tribe as indicated in its own words has a business plan. A detailed explanation of the business plan describing fully what **“diversified tribally governed commercial enterprises”** means must be provided.

The fee to trust application states and restates over and over, the intent is to eliminate the jurisdictional authority of the County of Santa Barbara and the State of California over the 5 parcels known as Camp 4. Here again, this phrase of ***“tribally governed commercial enterprises”*** and a goal to remove the authority and jurisdiction of both the State and the County raises a red flag. What is it the Tribe wishes to do outside of the current County and state jurisdiction beyond the development of 143 homes, an event center and grape growing?

The Tribe states that the majority of the land will be ***“banked”*** for future use. But the Tribe does not explain what that future use may consist of. *Land banking* is not a new method of increasing capital. Many developers employ this income generator by purchasing land, holding land and selling it as the real estate market increases in value. However, tribal trust lands are not easily sold in order to collect a capital gain. Thus, land banking for tribal trust lands has a different meaning. Banking the land for a future use, and in this instance it appears to be, ***“tribally governed commercial enterprises”***.

Land banking trust land creates significant issues that certainly prevent any action by the BIA to issue an

Fee to Trust Comments, for 1427.78 ac. for the Chumash Mission Indians of Santa Ynez, environmental statement of a "Finding of No Significant Impact" (FONSI). 25 U.S.C. Section 465 is a land use statute. *To acquire the land in trust without an environmental review and proper mitigation of the future "tribally governed commercial enterprises" constitutes an arbitrary and capricious action subject to judicial invalidation. Taking land into trust for purposes of land banking is contrary to the intent and purpose of this land use statute.*

**II. 25 C.F.R. 151.10 – On Reservation (a) the existence of statutory authority for the acquisition and any limitations contained in such authority;**

This application cannot move forward until a complete EIS is prepared and recirculated since the existing EA is based upon an On Reservation Acquisition and the now vacated TCA. *Since the BIA is obligated to accommodate tribes, it would be wise to have an independent 3<sup>rd</sup> party be appointed as the lead agency managing the National Environmental Protection Act (NEPA) process. This will assure all affected parties a fair, objective and transparent process.*

The Tribe in the EA has stated its plans to create an **event center**. The EA ambiguously states that the event center will hold 100 events per year and accommodate 1000 persons. It is reasonable to conclude this equates to, two events per weekend year round. This raises a number of unanswered questions which heighten public concern. Here again, 25 CFR 151.11 requires the Tribe to issue a detailed business plan of the economic benefits to the Tribe.

**(a) 25 C.F.R.151.10 On Reservation (b) the "need" of the individual Indian or the tribe for additional lands;**

The Chumash application is absent a showing of "immediate need" or "necessity". The Chumash are confusing its desire to **bank land** with the actual need for the protections afforded tribes by trust status. The Chumash have not stated a clear economic benefit for acquiring all 1427.78 acres of land in trust. Nor has the Chumash clearly defined any economic benefit of the ambiguous event center. The Chumash purchased this land on the open market and have exercised successful economic control over this land and many other fee land purchases in Santa Ynez for a number of years. The Chumash have achieved sustained economic self-determination.

The taking of this land into trust creates many negative impacts on the existing social-cultural, political and economic systems of the regional area. Citizens of the community lose control over the allowable developments of this land. Local government will lose ability to control developments significantly affecting its ability to protect the shared natural resources and the interests of the citizens that support it. The loss of this land is loss of taxable revenue that will be borne on the backs of all Santa Barbara County taxpayers, businesses, school districts, public safety and social services because the County of Santa Barbara must balance its budget. The proposed Cooperative Agreement offered by the Chumash does not wholly or fully address the economic impact to the County of Santa Barbara and all of its citizens through perpetuity.

The proposed use of open space and 143 homes has the potential of being worked out with the County of Santa Barbara and its Planning Department. The Tribe by holding the land in fee and developing it contributes to the strength of the local community as well as to the Tribe. The Tribe has not demonstrated that trust conveyance is necessary to facilitate tribal self-determination nor that the need of the land meets the statutory standards of 25 U.S.C. 465.

All Tribes are encouraged to strive for the greatest possible economic success. However the trust provisions of the Indian Reorganization Act (IRA) were not designed to subsidize tribes forever. Rather the IRA intent was

Fee to Trust Comments, for 1427.78 ac. for the Chumash Mission Indians of Santa Ynez, to provide a secure foundation from which tribal sovereigns could grow and achieve economic self-governance. The Chumash have achieved economic self-determination as evidenced by its being a major employer in the Santa Ynez Valley, a major land owner, a generous charitable contributor and an influential political player in local, state and federal politics.

***Consequently any approval to acquire the land in trust without stating a clear economic benefit and submitting a detailed business plan will constitute an arbitrary and capricious action subject to judicial invalidation.***

**(b). 25 C.F.R. 151.10 On Reservation (c) The purposes for which the land will be used;**

The Chumash first stated purpose for the additional 1,427.78 acres (5 parcels) to be taken into trust is for an additional 143 homes. Per the Chumash application there are 136 tribal members and 1300 lineal descendants. The Tribe in the EA has also stated their plans to create an event center. The event center will hold 100 events per year and accommodate 1000 persons. But the EA did not state the purpose or nature of the events. The Chumash application states that the trust acquisition of the proposed trust land would allow the Tribe to continue to build economic self-sufficiency through diversified tribally governed commercial enterprises". (Emphasis added) The Chumash have not clearly articulated what "*diversified tribally governed commercial enterprises*" it has in mind.

In a recent article posted in the Santa Maria Times, October 8, 2013 by Len Wood, *Extension granted for Camp 4 trust application comments*, Tribal Officials are attributed with stating;

"Any construction on Camp 4 would be subject to rules and review by the U.S. Environmental Protection Agency and the Army Corps of Engineers. Oversight for development would be by the BIA in accordance with the National Environmental Policy Act, tribal officials said."

This statement raises a number of red flags and questions that were not answered in the EA, the Application or the Re-submitted application. The quote above indicates plans for future construction beyond what is stated in the current EA, application or re-submitted application. The involvement of the EPA or Army Corps of Engineers suggests the need for approval of leasing under 25 CFR 162 or approvals under section 404 of the Clean Water Act.

- Is the Tribe planning to lease these 2.5 or 5 acres ranch homes to its 136 members or as a commercial venture to non-tribal citizens?
- Can tribal members who enter a lease then sub-lease these homes to non-tribal members or to tribal family members?
- Will the Tribe ensure that leases to non-Indians pay Possessory Interest taxes to the County of Santa Barbara?
- Will the Tribe lease to a major hotel or shopping mall chain for development of a commercial facility after the land is in trust?
- Is the Tribe planning on filling in a wetland or land that has been defined by the EPA as a navigable waterway of the U.S.?
- Is the Tribe planning on the development of another gas station with underground tanks that may affect a wetlands area?

The Chumash Fee-to-Trust Application, the EA and the re-submitted application fails to disclose the total purpose for which this land will be used. All any commenter can do is speculate as to the Tribe's future anticipated developments or actions. But this raises concerns for the BIA as well. How can decision makers

Fee to Trust Comments, for 1427.78 ac. for the Chumash Mission Indians of Santa Ynez, approve an application that is speculative? That is inconsistent with the land use aspect of the statute.

**(c). 25 C.F.R. 151.10 On Reservation (d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs.**

The Fee-to-Trust Application is for the benefit of the tribal government of the Chumash. It is uncertain if any of the nearby or adjacent land or other lands in the valley are currently owned by individual Indians. The Chumash should confirm that it is or isn't, and identify all of the fee land owned by individual Indian members in the Santa Ynez Valley.

**(d). 25 C.F.R. 151.10 (e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivision resulting from the removal of the land from the tax rolls.**

The State of California has 110 Indian tribal governments and 78<sup>2</sup> additional tribal groups seeking federal recognition. If the Chumash are permitted to acquire land in trust when it has no immediate need for the land, other tribes throughout the state will claim entitlement to the same treatment by the Department of the Interior pursuant to the provisions of 25 USC section 476 subdivisions (f) and (g) which provide that no agency of the United States shall make a determination under the Indian Reorganization Act (IRA) that "*classifies, enhances, or diminishes the privileges and immunities available to an Indian tribe relative to other federally recognized tribes by virtues of their status as Indian tribes*"

Unlimited fee to trust acquisitions by tribes that have no *immediate need* for additional land or seek to acquire land when no land was lost due to the Dawes Act, constitutes federal interference with the powers reserved to the State in a manner patently at odds with the intent of the Tenth Amendment. The State's loss over land use and taxation, two fundamental attributes of its sovereignty has a serious negative generational impact on the non-tribal citizens of California.

Moreover, Santa Barbara County's comments make clear there is a tremendous tax implications for county taxpayers should this property be taken into trust. The proposed Cooperative Agreement only takes into consideration the current assessed value of the property in calculating the tax loses to the County and then only for a fixed number of years. Santa Ynez Valley residents have already experienced the negative impacts of on-reservation developments that affect the off reservation community throughout the Valley. The Cooperative Agreement offered by the Chumash to the County of Santa Barbara ends in ten years and does not consider the ongoing impacts.

Placing the additional land into trust creates reduction in tax revenue for the Santa Ynez community as well as the local School District and other social services. Please see the County of Santa Barbara letter of Comment on the EA. Serious impacts to the School District have not been addressed.

**(e). 25 C.F.R. 151.10 (f) Jurisdictional problems and potential conflicts of land use which may arise;**

The Chumash through open market purchases has regain control over the development on these lands, however transferring this land from fee to trust grants the Chumash governmental control over these lands. This creates a disruptive and practical consequence to the surrounding areas which are populated by non-Indians.

<sup>2</sup> While the Office of Acknowledgement lists 78 groups several of the petitions for federal recognition have been denied, or Indian groups have been joined with established tribes or the Asst. Secretary has without congressional authority administratively recognized a group as a tribal sovereign. Approximately 69 groups are still petitioning for recognition.

Fee to Trust Comments, for 1427.78 ac. for the Chumash Mission Indians of Santa Ynez, Transferring these lands into trust creates a mix of state and tribal jurisdictions which burden the administration of state and local governments and adversely affects the private property of landowners neighboring the tribal lands. Any claim by the Chumash that jurisdictional issues have been resolved is belied by the lack of mutually beneficial agreements with affected governmental or public entities. Jurisdiction issues remain until there is a comprehensive mutually beneficial agreement that wholly and fully addresses the concerns of the County of Santa Barbara and the Santa Ynez Valley residents. Any agreement must consider and address the impacts that the Chumash Casino has already created in the Valley.

It is without dispute that California's criminal law is fully enforceable in Indian Country granting California Sheriffs both the authority and the obligation to protect Indian and non-Indians from criminals on California's Reservation and Rancherias. At the same time, California Indian governments have a federal status that presents a number of gray areas to members of law enforcement in the exercise of this obligation.

In 2010, President Obama signed into law the Tribal law and Order Act, tribes can now petition for the federal government to have concurrent jurisdiction with the state. Tribes can employ their own Federal Law Enforcement Officers with tribal and federal authority on the reservation and limited federal authority off-reservation. This includes limited authority over non-Indian citizens.

- Has a memorandum of understanding between the County Sheriff and the Chumash been developed to address jurisdictional issues related to law enforcement protocols and investigative procedures as well as a memorandum that considers concurrent jurisdiction with federal authorities?
- Is there a memorandum of understanding with the District Attorney's Office?

**(f). 25 C.F.R. 151.10 (g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.**

The property that the Chumash have proposed for trust status is in fee status. There are several easements and public rights on the properties that were specifically identified in the application. Also the Notice of Land Acquisition Application included copies of past litigation that identified potential monetary claims, private interests and public rights in the property. The Secretary of the Interior must ensure and stipulate in any final decision that easements, public rights on the properties remain enforceable on the trust parcels.

Regional Director Dutschke must require the elimination of all liens, encumbrances or infirmities prior to taking final approval action on this fee to trust acquisition. Transferring this land into trust without directly contacting easement owners, addressing the issues of public rights represents a "taking or inverse condemnation" without due process or just compensation. Additionally, loss of access to private properties would devalue and make specific properties unmarketable creating further irreparable harm without just compensation. The application does not fully or wholly address or resolve these real issues.

**(g). 25 C.F.R. 151.10 (h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW., Room 4525 MIB, Washington, DC 20240.)**

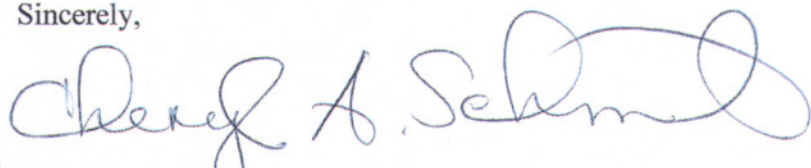
The application did not provide a report nor do we know if a report conforming to 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions has

Fee to Trust Comments, for 1427.78 ac. for the Chumash Mission Indians of Santa Ynez, been submitted by the Chumash, the BIA or the Secretary of the Interior. Such a report is necessary now considering the Tribal Officials quote regarding the EPA and Army Core of Engineers. Further this land is agricultural land. California only banned the use of DDT and other cancer causing pesticides in 1972. These banned pesticide residues can persist in topsoil several decades. It is very important that soil testing for these chemicals are completed especially in light of the fact the tribe is planning housing for its members.

### **III. CONCLUSION:**

This application as it is must be denied for all of the aforementioned reasons.

Sincerely,

A handwritten signature in blue ink that reads "Cheryl A. Schmit". The signature is fluid and cursive, with the first name "Cheryl" and last name "Schmit" clearly legible, and "A." in the middle.

Cheryl Schmit, Director  
Stand Up For California  
916 663 3207  
[cherylschmit@att.net](mailto:cherylschmit@att.net)  
[www.standupca.org](http://www.standupca.org)

# County Of Santa Barbara



Chandra L. Wallar  
County Executive Officer

105 East Anapamu Street, Room 406  
Santa Barbara, California 93101  
805-568-3400 • Fax 805-568-3414  
www.countyofsb.org

## Executive Office

October 31, 2013

Ms. Amy Dutschke, Regional Director  
Bureau of Indian Affairs,  
Pacific Regional Office  
2800 Cottage Way, Room 2820  
Sacramento, CA 95825

E-mail: [amy.dutschke@bia.gov](mailto:amy.dutschke@bia.gov)

Re: Santa Ynez Band of Chumash Mission Indians: Fee-to-Trust Application for Five Parcels Known as the Camp 4 Property

Dear Ms. Dutschke:

This comment letter is submitted by the County of Santa Barbara (County) in response to the Santa Ynez Band of Chumash Mission Indians' Fee-to-Trust Application for Five Parcels Known as the Camp 4 Property. Our comments are in accordance with 25 Code of Federal Regulations (CFR) Section 151. The County opposes this Trust Acquisition because of the substantial and significant potential negative impacts which may result, including jurisdictional problems, conflicts of land use and the loss of revenues needed to support public services, as a direct result of removal of the property from the County's tax roll.

### Introduction

On September 23, 2013 the County of Santa Barbara officially received notification of the *Application for Transfer of Title for Fee Lands Into Trust* submitted in July 2013 by the Santa Ynez Band of Chumash Mission Indians to the United States Department of the Interior (DOI), Bureau of Indian Affairs (BIA), for the property commonly referred to as Camp 4. The BIA is seeking comments regarding the proposed trust land acquisition in order to obtain sufficient data that would enable an analysis of the potential impacts on County government, which may result from the removal of Camp 4 from the tax roll and local jurisdiction. The BIA originally indicated that comments must be received within thirty days of receipt of the notice, October 23<sup>rd</sup>. As you know the proposed project is substantial in size, scope and affected resources. Because of the significant concerns that could result from this fee-to-trust approval, the County Executive Officer (CEO) requested a 60-day extension to review possible impacts and prepare comments. The BIA approved a 15-day extension for the County. With the extension County comments must be submitted prior to the close of business on November 7, 2013.

The Code of Federal Regulations pertaining to requests to have lands taken in trust, 25 CFR Section 151.10, addresses "on-reservation acquisitions" and 25 CFR Section 151.11 addresses "off-reservation acquisitions." Sections 151.10 and 151.11 both allow the County to provide written comments about the proposed acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

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Terri Maus-Nisich  
Assistant County Executive Officer  
tmaus@countyofsb.org

Dennis Bozanich  
Assistant to the County Executive Officer  
dbozanich@co.santa-barbara.ca.us

This response includes in more detail within:

- Section 151.10(e), both directly and through Section 151.11(d): impacts resulting from removal of the land from the tax rolls; and
- Section 151.10(f), both directly and through Section 151.11(d): as jurisdictional problems and potential conflicts of land use which may arise.

It is the County's position that the Camp 4 Trust Acquisition must be processed and evaluated in accordance with regulations addressed in 25 CFR Section 151.11 for "off-reservation acquisitions" because none of the property is adjacent and contiguous to current reservation boundaries.

### **Background**

The County of Santa Barbara (County) recognizes the role and unique interests of tribes, states, counties and other local government to protect all members of their communities and to provide governmental services and infrastructure benefits to all. In addition, the County recognizes and respects the tribal right of self-governance, to provide for tribal members and to preserve traditional tribal culture and heritage. In similar fashion, the County recognizes and promotes its own self-governance to provide for the health, safety and general welfare of all residents of our communities.

Under the fee-to-trust (FTT) process outlined in Federal Regulations tribes may request the federal government to take additional land owned by them in fee into trust. This FTT transfer process converts land from private or individual title to federal title, holding it in trust for exclusive use by an American Indian Tribe and removing it from local regulatory jurisdiction. As a result, the land becomes exempt from state and local government taxes and land use regulations. In addition to the substantial financial losses to the County and other taxing entities, the status of trust land often creates jurisdiction confusion in law enforcement, land use planning, social service delivery and emergency services. Additionally, the loss of local control can result in land uses that conflict with the County's General Plan, Community Plans, and surrounding uses. This loss of local control to regulate land uses without appropriate mitigation can congest county/state roadways, impact water quality in waterways, reduce water supply to adjacent properties, degrade habitat, air quality and the environment and create public nuisance complaints.

### **Significant Loss of Tax Revenue**

The County currently provides major public services to the property proposed for Trust Acquisition. These include law enforcement, fire protection, emergency medical response, and roadway access and maintenance. With the development anticipated in the proposed project the need for these services and many others will be expanded. Moving the property from fee ownership into trust will remove it from the tax rolls. The result will be significant loss of local tax revenue for the County, schools, and other taxing entities. As this property is developed, the tax value will increase exponentially and the County will suffer a substantial loss of tax revenue with no corresponding mitigation.

Per the County Assessor, the 2012/13 assessed value on the Camp 4 parcels, under the Williamson Act Contract (agreement for the property to remain in agriculture), was \$8.3 million with an estimated tax of \$83,000 (1%). The current assessed value, without the Williamson Act Contract, is \$34 million with an estimated tax of \$340,000. Assuming no additional development of the property, if the land is taken into trust and removed from the tax rolls, the county will lose nearly \$35 million over 50 years. Under the proposed Alternative #1, principally residential, the county would lose more than \$311 million over 50 years. Under proposed Alternative #2 (residential and tribal facilities) the County would lose nearly \$275 million in property taxes and an unknown additional amount of sales tax generated by the Community Center and Banquet Hall/Exhibition facility.



Cumulative Estimated Property Tax Loss - Camp 4  
Tax Value (1% of Assessed Value)  
(dollars in millions)

	Current	Year 5	Year 10	Year 20	Year 50
Existing uses - (w/o Williamson Act )	\$ .34	\$ 1.84	\$ 4.15	\$ 9.8	\$ 34.9
Alternative #1 – 5 Acre parcels	\$ 3.8	\$ 19.8	\$ 42.0	\$ 94.0	\$311.4
Alternative #2 – 1 Acre parcels	\$ 3.1	\$ 16.2	\$ 34.5	\$ 78.2	\$273.8

**Compatibility with the County's General Plan, Santa Ynez Community Plan, and County land use regulations**

Tribal applications to take land into federal trust often do not specify and limit the uses for the proposed site, and even when they do, a tribe is not bound to those uses once the land is taken into trust. This is the case with the Camp 4 project. Per the Tribe, the proposed uses include both development of a portion for housing as well as land-banking and holding land for future development. The development contemplated by the Tribe is likely the largest and most impactful in the entire Santa Ynez Valley. The proposed development is incompatible with the County's General Plan, Santa Ynez Community Plan, and County land use regulations. It should be noted that the Santa Ynez Valley Community Plan includes guidance that the County shall oppose the loss of jurisdictional authority over land within the Plan area where the intended use is inconsistent with the goals, policies and development standards of the Plan or in the absence of a satisfactory legally enforceable agreement.

It should also be noted that the uses specified in the application by the Tribe may be achieved, with the property remaining in fee, via the County's land use process to amend a Community Plan. In doing so, the amended Plan respects service, resource, and infrastructure capacities while accommodating development to a degree and in a manner which provides the greatest community welfare with the least public and private harm. Appropriate mitigation of any additional impacts is required. It is recognized and anticipated that the Tribe may choose to change the uses on the site, and once in trust the County has no regulatory authority to play a role in the approval of such uses.

**Proposed Trust Acquisition is "off reservation"**

The proposed Trust Acquisition encompasses over 1,400 acres and is zoned AG-II-100 (Agriculture, with a minimum parcel size of 100 acres). This property is under an existing Williamson Act Contract, which is a 10-year rolling contract enabling property taxes to be substantially reduced in exchange for the land remaining in agriculture. The property has been preserved for agricultural use by a Williamson Act Contract since at least 1971. In August 2013, the Tribe submitted an application for non-renewal, meaning the contract will expire in December 31, 2022. On July 1, 2013, the Tribe passed Resolution 931 which requires compliance with the existing Williamson Act Contract until the contract expires. It is unlikely the contract can legally be removed by approval of the Trust Acquisition.

Finally, Camp 4 is located 1.75 miles from the Tribe's Reservation and does not have any shared boundaries with the Reservation. Therefore the BIA must utilize the process for off-reservation discretionary trust acquisition. (25 CFR 151.11)

**There is no need for additional land to be taken into Trust**

Camp 4 is 1,433 acres located in the middle of the Santa Ynez Valley in Santa Barbara County, California, directly off of State Highway 154 between Baseline Avenue and Armour Ranch Road. The property is zoned exclusively for agriculture. The project proposes 143 residential dwellings ranging from 3,000 to 5,000 square feet as well as an on-site wastewater treatment plant, roads, and other infrastructure.

The Tribe currently has an approximately 138-acre Reservation located on the south side of Highway 246 in the Santa Ynez Valley, approximately 1.6 miles west of the intersection of Highways 246 and 154. Of the 138 acres, at least 26 acres currently has residential capacity, and 16 acres has economic development capacity. The Tribe has 136 tribal members and approximately 1,300 lineal descendants. The stated purpose of Camp 4 is to provide housing for tribal members because the current Reservation is claimed to be insufficient in size.

In August 2013, the BIA released an Environmental Assessment for public review and comment. The Environmental Assessment identifies two Alternatives. Alternative A consists of 1,433 acres to be converted to 143 five-acre residential lots. A total of 793 acres would be covered by residential homes and transportation infrastructure. The project site would also include 300 acres of vineyards (256 existing and 44 acres dedicated for expansion), 206 acres of open space/recreational, 98 acres of riparian corridor and 33 acres of oak woodland conservation and 3 acres of Special Purpose Zone for utilities.

Alternative B consists of 143 one-acre residential lots for tribal members. The residential lots and roadways would cover approximately 194 acres of the project site. The project site would include 775 acres of open space/recreational use and 30 acres of Tribal Facilities and the same acreages of vineyard, riparian corridor and oak woodland conservation, and utilities. The Tribal Facilities include a Community Center with a Banquet Hall/Exhibition Facility, an office complex and tribal community space. The Community Center proposes 100 special events per year with potentially up to 1000 attendees at each of the special events. This equates to events two nights a week, with an increase of 2000 visitors to the Valley each week.

Based on the need for less than 200 of the over 1400 acres of the property to be used for housing and the fact that the proposed residential development could be processed via the County's land use development process, the County believes there is no need for additional land to be taken into trust. (25 CFR 151.11(o)) If the property remains in fee and is developed for the purposes proposed in the Trust Acquisition application it contributes to the financial strength of the entire community, including the Tribe, while respecting local concerns for development and avoiding jurisdictional and land use conflicts. Other residents of the county utilize and develop properties in compliance with local regulations. The Tribe must at least attempt to work with the County via the land development process placed on all residents prior to concluding that its only option for development is conversion of the property to trust. While the Tribe may want the BIA to approve moving the land to trust, it has not articulated a genuine need, or necessity arising from existing circumstances, nor has it articulated a satisfactory economic benefit, to justify transferring into trust land that the Tribe currently holds in fee.

#### Need for an Environmental Impact Statement

Factors to be considered with the Camp 4 FTT application should include the extent of the impacts from the proposed project and any proposed mitigation measures. To adequately evaluate the impacts, the County has identified the need for the environmental document to be elevated from the current level proposed by the BIA of an Environmental Assessment (EA) to an Environmental Impact Statement (EIS). An EIS is necessary to disclose all project components, accurately analyze all the project's potentially significant direct and cumulative impacts, and require substantial measures to mitigate or avoid them. An EIS is also necessary to evaluate a full range of alternatives including use of the County's standard land development process for property held in fee. Without an EIS that provides correct and complete information, neither the BIA nor the public can make a proper, informed evaluation of the proposed project. At a minimum, impacts to be considered should include:

- Compatibility with the County's General Plan, Santa Ynez Community Plan, and County land use regulations;
- Conversion of Agricultural Land and Agricultural Preserve (Williamson Act) Contract requirements;

- Provision of public safety services including law enforcement, fire protection, and emergency medical services;
- Provision of other public services including schools, parks and recreation;
- Avoidance of negative impacts to water supplies, storm water quality, wastewater or solid waste management, biology, and air quality;
- Traffic capacity and circulation for vehicles, bicycles, and pedestrians; and
- Loss of taxes and special assessments used to fund countywide services.

### Tribal Consolidation Area (TCA) Appeal

It should be noted that the County appealed the recent BIA decision to approve an 11,500 acre Tribal Consolidation Area (TCA) for the Santa Ynez Band of Chumash Mission Indians. On October 1, 2013 the Tribe sent a letter to the BIA withdrawing their request for consideration of this Tribal Consolidation Area which the BIA approved on June 17, 2013. This withdrawal of the TCA creates a confusing contradiction given the fact that the TCA serves as a foundational document for both the Camp 4 fee-to-trust (FTT) application and the associated Environmental Assessment (EA). The County has requested that the BIA clarify the effect of the withdrawal of the TCA.

On October 28, 2013 the County received notice from the Interior Board of Indian Appeals (IBIA) stating that because of the withdrawal letter by the Tribe, the IBIA was declaring the decision by the BIA to approve the TCA to be moot and therefore, without any legal effect. Prior to BIA determination of FTT for the Camp 4 property, which relied heavily upon inclusion within the boundaries of the TCA, the Trust Acquisition application and associated environmental document must be amended.

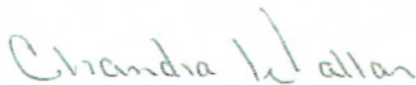
### Conclusion

The County requests that this Trust Acquisition be denied and that the Tribe be directed to process any and all development proposals utilizing the County's land development process which is available to all property owners.

The currently proposed project conflicts with the County's General Plan, Santa Ynez Community Plan, and County land use regulations. The BIA has used the wrong standard for trust consideration since the proposed parcels can only be evaluated pursuant to the federal regulation for off-reservation acquisitions. In addition the Trust Acquisition cannot be adequately evaluated in the absence of an Environmental Impact Statement. The Tribe has not stated a real need for additional land to be taken into trust and removed from the tax rolls and local jurisdiction. If the land is taken into trust the County will lose substantial tax revenue, while at the same time experiencing an increased demand for its services and infrastructure. Lastly the County's appeal of the Tribal Consolidation Area has not been completely resolved which greatly impacts the analysis of the Trust Acquisition. These factors, individually and collectively, present the reasons to deny the Trust Acquisition.

Thank you for the opportunity to comment on the Camp 4 Trust Acquisition. If you have any questions concerning this comment please contact Dennis Bozanich, Assistant to the County Executive Officer, at 805-568-3400 or [Dbozanich@co.santa-barbara.ca.us](mailto:Dbozanich@co.santa-barbara.ca.us).

Sincerely,



Chandra L. Wallar  
County Executive Officer

# County Of Santa Barbara



105 East Anapamu Street, Room 406  
Santa Barbara, California 93101  
805-568-3400 • Fax 805-568-3414  
www.countyofsb.org

Mona Miyasato  
County Executive Officer

## Executive Office

December 17, 2013

Ms. Amy Dutschke, Regional Director  
Bureau of Indian Affairs  
Pacific Regional Office  
2800 Cottage Way, Room 2820  
Sacramento, CA 95825

E-mail: [amy.dutschke@bia.gov](mailto:amy.dutschke@bia.gov)

**Re: Application for Transfer of Title for Fee Lands Into Trust Submitted by the Santa Ynez Band of Chumash Mission Indians dated November 2013**

Dear Ms. Dutschke:

On October 31, 2013 my office provided comments pertaining to the Santa Ynez Band of Chumash Indians (Tribe) Fee to Trust Application for five parcels known as Camp 4. At that juncture, the Tribal Consolidation Area (TCA) was a matter for consideration and the Fee to Trust Application was premised on Camp 4 being part of a TCA. After the County of Santa Barbara provided its comments of October 31, 2013, the Interior Board of Indian Appeals vacated approval of the TCA and the Tribe withdrew it from consideration.

On November 25, 2013, the County of Santa Barbara received a copy of the Application for Transfer of Title for Fee Lands Into Trust Submitted by the Santa Ynez Band of Chumash Mission Indians which includes an amended and revised narrative for the Camp 4 Fee to Trust Application (Amended Fee to Trust Application). In order to ensure that the County of Santa Barbara's comments are reflective of the Amended Fee to Trust Application, this comment letter is now submitted. All comments are in accordance with 25 Code of Federal Regulations (CFR) Section 151. The County opposes this trust acquisition because of the substantial and significant potential negative impacts which may result as a direct result of removal of the property from the County's tax roll and jurisdiction, including conflicts of land use and the loss of revenues needed to support public services.

### Introduction

On November 25, 2013 the County of Santa Barbara officially received notification of the Amended Fee to Trust Application submitted in November 2013 by the Santa Ynez Band of Chumash Mission Indians to the United States Department of the Interior (DOI), Bureau of Indian Affairs (BIA), for the property commonly referred to as Camp 4. The BIA is seeking comments regarding the proposed trust land acquisition in order to obtain sufficient data that would enable an analysis of the potential impacts on County government, which may result from the removal of Camp 4 from the tax roll and local jurisdiction. The BIA indicated that comments must be received within thirty days of receipt of the notice.

The Code of Federal Regulations pertaining to requests to have lands taken in trust, 25 CFR Section 151.10, addresses "on-reservation acquisitions" and 25 CFR Section 151.11 addresses "off-reservation acquisitions." Sections 151.10 and 151.11 both allow the County to provide written comments about the

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Page 2 of 5

proposed acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

This response includes in more detail within:

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It is the County's position that the Amended Fee to Trust Application must be processed and evaluated in accordance with regulations addressed in 25 CFR Section 151.11 for "off-reservation acquisitions" because none of the property is adjacent and contiguous to current reservation boundaries.

### **Background**

The County of Santa Barbara (County) recognizes the role and unique interests of tribes, states, counties and other local government to protect all members of their communities and to provide governmental services and infrastructure benefits to all. In addition, the County recognizes and respects the tribal right of self-governance, to provide for tribal members and to preserve traditional tribal culture and heritage. In similar fashion, the County recognizes and promotes its own self-governance to provide for the health, safety and general welfare of all residents of our communities.

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### **Significant Loss of Tax Revenue**

The County currently provides major public services to the property proposed for trust acquisition in the Amended Fee to Trust Application. These services include law enforcement, fire protection, emergency medical response, and roadway access and maintenance. With the development anticipated in the proposed project, the need for these services and many others will be expanded. Moving the property from fee ownership into trust, however, will remove it from the tax rolls. The result will be significant loss of local tax revenue for the County, schools, and other taxing entities. As this property is developed, the tax value will increase exponentially and the County will suffer a substantial loss of tax revenue with no corresponding mitigation.

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Tax Value (1% of Assessed Value)  
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It should also be noted that the uses specified in the application by the Tribe may be achieved, with the property remaining in fee, via the County’s land use process to amend a Community Plan. In doing so, the amended Santa Ynez Community Plan addresses service, resource, and infrastructure capacities while accommodating development to a degree and in a manner which provides the greatest community welfare with the least public and private harm. Appropriate mitigation of any additional impacts is required. It is recognized and anticipated that the Tribe may choose to change the uses on the site, and once in trust the County has no regulatory authority to play a role in the approval of such uses.

**Proposed Trust Acquisition is “off reservation”**

The trust acquisition proposed in the Amended Fee to Trust Application encompasses over 1,400 acres and is zoned AG-II-100 (Agriculture, with a minimum parcel size of 100 acres). This property is under an existing Williamson Act Contract, which is a 10-year rolling contract enabling property taxes to be substantially reduced in exchange for the land remaining in agriculture. The property has been preserved for agricultural use by a Williamson Act Contract since at least 1971. In August 2013, the Tribe submitted an application for non-renewal, meaning the contract will expire in December 31, 2022. On July 1, 2013, the Tribe passed Resolution 931 which requires compliance with the existing Williamson Act Contract until the contract expires. It is unlikely the contract can legally be removed by approval of the Amended Fee to Trust Application.

Finally, Camp 4 is located 1.75 miles from the Tribe’s Reservation and does not have any shared boundaries with the Reservation. Therefore the BIA must utilize the process for off-reservation discretionary trust acquisition. (25 CFR 151.11)

**There is no need for additional land to be taken into Trust**

Camp 4 is 1,433 acres located in the middle of the Santa Ynez Valley in Santa Barbara County, California, directly off of State Highway 154 between Baseline Avenue and Armour Ranch Road. The property is zoned exclusively for agriculture. The project proposes 143 residential dwellings ranging from 3,000 to 5,000 square feet as well as an on-site wastewater treatment plant, roads, and other infrastructure.

The Tribe currently has an approximately 138-acre Reservation located on the south side of Highway 246 in the Santa Ynez Valley, approximately 1.6 miles west of the intersection of Highways 246 and 154. Of the 138 acres, at least 26 acres currently has residential capacity, and 16 acres has economic development capacity. The Tribe has 136 tribal members and approximately 1,300 lineal descendants. The stated purpose of the Amended Fee to Trust Application is to provide housing for tribal members because the current Reservation is claimed to be insufficient in size.

In August 2013, the BIA released an Environmental Assessment for public review and comment. The Environmental Assessment identifies two Alternatives. Alternative A consists of 1,433 acres to be converted to 143 five-acre residential lots. A total of 793 acres would be covered by residential homes and transportation infrastructure. The project site would also include 300 acres of vineyards (256 existing and 44 acres dedicated for expansion), 206 acres of open space/recreational, 98 acres of riparian corridor and 33 acres of oak woodland conservation and 3 acres of Special Purpose Zone for utilities.

Alternative B consists of 143 one-acre residential lots for tribal members. The residential lots and roadways would cover approximately 194 acres of the project site. The project site would include 775 acres of open space/recreational use and 30 acres of Tribal Facilities and the same acreages of vineyard, riparian corridor and oak woodland conservation, and utilities. The Tribal Facilities include a Community Center with a Banquet Hall/Exhibition Facility, an office complex and tribal community space. The Community Center proposes 100 special events per year with potentially up to 1000 attendees at each of the special events. This equates to events two nights a week, with an increase of 2000 visitors to the Valley each week.

Based on the need for less than 200 of the over 1400 acres of the property to be used for housing and the fact that the proposed residential development could be processed via the County's land use development process, the County believes there is no need for additional land to be taken into trust. (25 CFR 151.11(o).) If the property remains in fee and is developed for the purposes proposed in the Amended Fee to Trust Application, it contributes to the financial strength of the entire community, including the Tribe, while respecting local concerns for development and avoiding jurisdictional and land use conflicts. Other residents of the county utilize and develop properties in compliance with local regulations. The Tribe must at least attempt to work with the County via the land development process placed on all residents prior to concluding that its only option for development is conversion of the property to trust. While the Tribe may want the BIA to approve moving the land to trust, it has not articulated a genuine need, or necessity arising from existing circumstances, nor has it articulated a satisfactory economic benefit, to justify transferring into trust land that the Tribe currently holds in fee.

#### **Need for an Environmental Impact Statement**

Factors to be considered with the Amended Fee to Trust Application should include the extent of the impacts from the proposed project and any proposed mitigation measures. To adequately evaluate the impacts, the County has identified the need for the environmental document to be elevated from the current level proposed by the BIA of an Environmental Assessment (EA) to an Environmental Impact Statement (EIS). An EIS is necessary to disclose all project components, accurately analyze all the project's potentially significant direct and cumulative impacts, and require substantial measures to mitigate or avoid them. An EIS is also necessary to evaluate a full range of alternatives including use of the County's standard land development process for property held in fee. Without an EIS that provides correct and complete information, neither the BIA nor the public can make a proper, informed evaluation of the proposed project. At a minimum, impacts to be considered should include:

- Compatibility with the County's General Plan, Santa Ynez Community Plan, and County land use regulations;
- Conversion of Agricultural Land and Agricultural Preserve (Williamson Act) Contract requirements;
- Provision of public safety services including law enforcement, fire protection, and emergency medical services;

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- Provision of other public services including schools, parks and recreation;
- Avoidance of negative impacts to water supplies, storm water quality, wastewater or solid waste management, biology, and air quality;
- Traffic capacity and circulation for vehicles, bicycles, and pedestrians; and
- Loss of taxes and special assessments used to fund countywide services.

County submitted its complete comments to the EA on October 7, 2013. A copy of the October 7 comments is attached to this letter.

In addition to the EA being an inadequate environmental review for the proposed project, the EA at issue is now further and even more fundamentally flawed. The EA supporting the Amended Fee to Trust Application was completed in August 2013 and is premised on the now withdrawn and vacated TCA. Therefore, it is no longer based on accurate or complete information concerning the Amended Fee to Trust Application. For example, the proposed alternatives in Section 2.0 of the EA are analyzed within the context of there being a TCA, which clearly does not exist. Accordingly, the EA should be withdrawn and the proper environmental review – an EIS – conducted in order to satisfy the requirements of the National Environmental Policy Act.

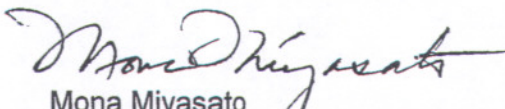
### **Conclusion**

The County requests that the Amended Fee to Trust Application be denied and that the Tribe be directed to process any and all development proposals utilizing the County's land development process which is available to all property owners.

The project currently proposed by the Amended Fee to Trust Application conflicts with the County's General Plan, Santa Ynez Community Plan, and County land use regulations. In addition the Amended Fee to Trust Application cannot be adequately evaluated in the absence of an Environmental Impact Statement. Further, it does not demonstrate the necessary justification for the BIA to acquire the land into trust. The Tribe has not stated a real need for additional land to be taken into trust and removed from the tax rolls and local jurisdiction. If the land is taken into trust, the County will lose substantial tax revenue, while at the same time experiencing an increased demand for its services and infrastructure.

Thank you for the opportunity to comment on the Amended Fee to Trust Application. If you have any questions concerning this comment please contact Dennis Bozanich, Assistant to the County Executive Officer, at 805-568-3400 or [Dbozanich@co.santa-barbara.ca.us](mailto:Dbozanich@co.santa-barbara.ca.us).

Sincerely,



Mona Miyasato  
County Executive Officer

cc: Members of the Board of Supervisors  
Congresswoman Lois Capps, California 24<sup>th</sup> Congressional District  
Senator Dianne Feinstein  
Senator Barbara Boxer  
Congressman Doc Hastings, Natural Resources Committee Chair  
Thomas Walters, Walters and Associates  
Sam Cohen, Santa Ynez Band of Chumash